IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

Crl.MC.No. 2223 of 2004(C)

ST.2587/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, THRISSUR

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PETITIONER: ACCUSED N0.4

C.JAYASANKARAN, AGED 50,
S/O.SRI.K.M.KRISHNA WARRIER,
RESIDING AT KOLEZHI THRISSUR.

BY ADV. SRI.K.P.SREEKUMAR

RESPONDENTS: COMPLAINANT
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1. V.K.SUBRAMANIAN, AGED 71,
S/O.VALIYAPARAMBIL KUNHIKARAPPAN,
MANALUR VILLAGE, THRISSUR TALUK.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.P.VIJAYA BHANU
SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

CRL. M.C. NO. 2223 OF 2004

Dated this the 21st day of November 2006

ORDER

The petitioner, who is the 4th accused in S.T. No. 2587/2002 in the file of Judicial First Class Magistrate, Thrissur with respect to the offence under section 138 of the Negotiable Instruments Act with respect to the dishonour of cheque for Rs. 4,85,000/- has sought for getting quashed the proceedings against him on the allegation that he is not responsible for the cheque issued by the second respondent, The Managing Director of the company, Messrs. Warrier Herbal Products Ltd. The case of the petitioner is exclusively based on the provision in section 141 of the Negotiable Instruments Act that only such persons who are in charge of and responsible for the conduct of the business of the company shall be guilty of the offence. The petitioner has cited the decision of the Supreme Court in **SMS Pharmaceuticals Ltd., v. Neeta Bhalla and another** (AIR 2005 SC 3512) held that the requirement of section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time and this has to be averred as a fact as there is no deemed liability for a Director in such

cases. A clear case should be spelled out in the complaint against the person sought to be made liable.

It is the case of the petitioner that Annexure B notice has been sent to the petitioner as well wherein it is specifically averred that the petitioner is also a person looking after the day to day affairs of the company and responsible for the affairs of the company. Moreover, in the complaint the petitioner has been described as a full time Director and that he has received a notice wherein it is specifically averred that he is one of the persons who looked after the day to day affairs of the company and responsible for the affairs of the company. It appears that the subsistence of section 141 (1) has been made out in the proceedings. In the circumstances, I find that the proceedings against the petitioner is not liable to be quashed at the threshold. All the same the petitioner may raise the above contentions before the court below and the court shall consider the same untrammeled by any observations made herein. The Crl. M.C is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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